

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4030 of 1998

WITH

CRIMINAL MISC.APPLICATION No 4032 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAYASHREE BHASKAR SANDU

Versus

STATE OF GUJARAT

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Appearance:

MR PONDA FOR MR NK MAJMUDAR for Petitioners

MR SA PANDYA, APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/03/99

COMMON C.A.V. JUDGEMENT

Above two petitions have been filed by the petitioners under sec.482 of Cr.P.C. for quashing of the

proceedings and complaint in Criminal Case No.25 of 1987 pending in the Court of Judicial Magistrate First Class at Halol filed by the complainant-respondent No.2 against the petitioners for the offence under secs.406, 420, 380, 381, 447, 448 and 114 of Indian Penal Code. As both these petitions have arisen out of same complaint filed by the complainant, I have heard both these petitions together and decide by this common judgment.

2. The short facts of the prosecution case are that on 7-5-1987 at about 2 p.m. the petitioner-accused No.1 of Cri.Misc.Appln.No.4032 of 1998 and petitioners-accused Nos.2 to 7 of Cri.Misc.Appln.No.4030 of 1998 illegally entered in the factory premises and committed theft of machinery and other articles as described in para 8 of the complaint after breaking open the lock. The original complainant came to know about it through the watchman of the factory Shri Chimanbhai Chauhan on 9-5-1987. Thereafter, he contacted the petitioner of Cri. Misc.Appln. No.4032 of 1998 on 13-5-1987 and after enquiring about the same, he lodged the complaint directly in the Court of Judicial Magistrate First Class at Halol on 15-5-1987 against the petitioners. After verifying the same, learned J.M.F.C. directed the police to investigate the matter under sec.156(3) of Cr.P.C. In view of that order, Halol Police has investigated the matter and submitted a report to that effect being final report No.5 of 1988 classifying the case as 'C' summary. Thereafter, for the first time on 17-3-1998, the respondent No.2-original complainant filed a protest application and took written objection regarding the report submitted by the Police and requested the Court that the case be sent to Senior Police Inspector for enquiry under sec.173(8) of Cr.P.C. Learned J.M.F.C., after hearing the original complainant, passed an order on 30-3-1998 directing the Sub-Inspector of Police, Halol Police Station for enquiry under sec.173(8) of Cr.P.C. and to report within 30 days.

3. Against the complaint and subsequently the order passed by the learned JMFC under sec.173(8) of Cr.P.C., present petitioners have filed the present petitions under sec.482 of Cr.P.C. for which notice was issued. In response, Mr.P.M.Thakker, learned counsel appeared for the respondent No.2 and Mr.S.A.Pandya, learned APP appeared for the respondent No.1-State.

4. I have heard learned counsel for the respective parties at length. At the end of arguments, learned counsel for respondent No.2 has mainly requested this Court that there are various other proceedings of civil

nature pending between the parties in various Courts and, therefore, while passing the present order, Court should look into the matter in seeing that the rights of the parties are not affected. Keeping in mind the above civil proceedings pending between the parties, I am deciding these petitions.

5. The facts emerging from the complaint are that wife of the complainant and other petitioners were the partners in a firm, namely Sandu Products and they have started manufacturing ayurvedic medicines at Pavagadh Road, Halol, Taluka and Dist. Panchmahals, Gujarat. Except the wife of respondent No.2, i.e. wife of the complainant, other partners of the firm had executed a Power of Attorney in favour of the respondent No.2. In short, the petitioners of Cri.Misc.Appln.No.4030 of 1998 had executed above Power of Attorney in favour of the complainant for conducting day-to-day affairs of the firm. The above Power of Attorney holder has filed a criminal complaint against the partners of the firm, i.e. accused Nos.2 to 4. According to the complainant, above accused have stolen away the machineries and other articles from the factory which is otherwise belonging to the partnership firm. Even as per the complaint, the alleged incident has taken place on 7-5-1987 at about 2 p.m. and at the relevant time, the complainant or his wife was not present. He came to know about the alleged incident on 9-5-1987 through the watchman of the factory, i.e. Shri Chimanbhai Chauhan and as per para 8 of the complaint, his reaction was that he felt sorry for that event. Thereafter, he remained silent upto 13-5-1987 and he has filed the present complaint directly in the Court on 13-5-1987 after consulting his legal expert stating that some machineries were stolen from the factory. Nowhere in the complaint it is mentioned that at the relevant time, accused Nos.2,4 and 5 were there at the scene of occurrence and he has mentioned the accused Nos.5,6 and 7 as unknown persons. So, in short, he has tried to file the present complaint only against the partners of Sandu Products as Power of Attorney holder of the said firm.

6. The facts remain that there are disputes amongst the partners of Sandu Products wherein complainant is having the Power of Attorney of partners, i.e. accused Nos.2,3 and 4 and fourth partner is the wife of the complainant and, therefore, one can say that the Power of Attorney, who is only having the power to look after the day-to-day affairs of the firm, has filed the complaint against the partners of the firm directly before the Court and not before the Police Station, that too, after

a period of seven days by consulting his legal expert. Over and above, civil disputes between the parties are going on, which fact has been accepted by the learned counsel for the respective parties. When the Court below has passed the order under sec.156(3) of Cr.P.C. and handed over the investigation to Halol Police, who, after completing the investigation, filed the 'C' summary in the year 1988 and matter remained silent till March, 1998 and as per the application received from the complainant, Court has directed the Halol Police to further investigate the matter under sec.173(8) of Cr.P.C. and that too, after a lapse of 10 years. When the 'C' summary has been filed, above course of action is not remained open for the Court below to direct for further investigation under sec.173(8) of Cr.P.C. The observation made in a case reported in AIR 1997 (1) SCC page 361 is required to be taken note of in this case. Even civil litigations are going on from very beginning for the dispute in question. It is to be seen that private complaint has been filed by the complainant in the year 1987 and, therefore, now in the year 1999 question of further investigating the case is out of question. Court machinery should not be permitted to be used to settle the personal grievance or civil dispute by way of criminal litigation and in this type of case, while passing the order, Court below should be much more careful in seeing that when civil disputes are pending between the parties, in order to settle the same, parties should not be permitted to file criminal complaint for their ulterior motives.

7. Looking to the above facts and circumstances, I am of the opinion that present complaint does not disclose any offence against the present petitioners and the same is frivolous and vexatious and if this complaint and criminal proceedings will be allowed to remain, it will amount to abuse of process of Court, particularly when the complainant has tried to convert the civil dispute into criminal one.

8. In the result, the proceedings and complaint in Criminal Case No.25 of 1987 pending in the Court of Judicial Magistrate First Class, Halol is hereby quashed and order passed by the learned Magistrate on 30-3-1998 is set aside. Rule made absolute in both these matters.

9. Original order is ordered to be kept in Cri.Misc.Appln.No.4030 of 1998 and a copy of the same is ordered to be kept in Cri.Misc.Appln.No.4032 of 1998.

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